

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2138

Introduced by Assembly Member Chesbro

February 18, 2010

An act to add Chapter 6.6 (commencing with Section 42395) to Part 3 of Part 9 (commencing with Section 49700) to Division 30 of the Public Resources Code, relating to ~~recycling~~ *product management*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, as amended, Chesbro. ~~Recycling: food service packaging: carryout bags.~~ *Product management: single-use recyclable packaging containers.*

The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and Recovery requires every rigid plastic packaging container, as defined, sold or offered for sale in this state, to generally meet one of specified criteria. Existing law requires the operator of a store to establish an at-store recycling program for plastic carryout bags, until January 1, 2013.

This bill would enact the Plastic Ocean Pollution Reduction, Recycling, and Composting Act and would prohibit a food provider, after ~~an unspecified date~~ *July 1, 2011*, but not after July 1, 2013, from distributing a disposable food service packaging or a single-use carryout bag, as defined, unless the packaging or bag meet the criteria for either compostable packaging or recyclable packaging. The bill would prohibit a food provider, on and after July 1, 2013, from distributing a disposable food service packaging or a single-use carryout bag to a consumer, unless the department determines the packaging or bag ~~meet a specified composting or recycling rate.~~ *The department would be required to*

~~adopt regulations to implement these requirements is recovered for composting or recovered for recycling at a rate of 25 percent or more.~~

~~This bill would provide for the imposition of a civil penalty upon a person violating these requirements and would require the penalties to be deposited into the Ocean Pollution Reduction Account, which the bill would create in the Integrated Waste Management Fund in the State Treasury. The bill would authorize the department to expend the moneys deposited in the account, upon appropriation by the Legislature, to provide public education and assist local governmental agencies in efforts to reduce plastic waste and marine debris, and for the board's costs of implementing the act.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 9 (commencing with Section 49700) is added
2 to Division 30 of the Public Resources Code, to read:

3
4 PART 9. PRODUCT MANAGEMENT

5
6 CHAPTER 1. DEFINITIONS

7
8 CHAPTER 2. POWERS AND DUTIES

9
10 CHAPTER 3. ENFORCEMENT AND PENALTIES

11
12 CHAPTER 4. PLASTIC OCEAN POLLUTION REDUCTION,
13 RECYCLING AND COMPOSTING ACT

14
15 Article 1. General Provisions

16
17 49700. This chapter shall be known, and may be cited, as the
18 Plastic Ocean Pollution Reduction, Recycling, and Composting
19 Act.

20 49750.1. It is the intent of the Legislature, consistent with
21 recommendations in the Ocean Protection Council report
22 “Eliminating Land-based Discharges of Marine Debris in
23 California,” to designate responsibility and authority for reduction

1 of marine debris, plastic ocean pollution, and its sources to a state
2 agency.

3
4 Article 2. Definitions

5
6 49751. For the purposes of this chapter the following terms
7 have the following meanings, unless the context clearly requires
8 otherwise:

9 (a) “Compostable packaging” means a material that meets all
10 of the following criteria:

11 (1) The packaging distributed with food for in-store consumption
12 is accepted back for composting by the food provider.

13 (2) The packaging is accepted for composting in a residential
14 collection program available to at least 75 percent of the
15 households in the jurisdiction in which it is distributed, as
16 determined by the department.

17 (3) The packaging is made of a material that meets the American
18 Society for Testing and Materials (ASTM) Standard Specification
19 for Compostable Plastics D6400, as published in September 2004.
20 For purposes of this paragraph, an ASTM standard specification
21 does not include an ASTM Standard Guide, a Standard Practice,
22 or a Standard Test Method.

23 (b) “Department” means the Department of Resources
24 Recycling and Recovery.

25 (c) (1) “Disposable food service packaging” means single-use
26 disposable products used by a food provider for serving or
27 transporting prepared and ready-to-consume food or beverages.

28 (2) “Disposable food service packaging” includes, but is not
29 limited to, plates, cups, bowls, trays, and hinged or lidded
30 containers.

31 (3) “Disposable food service packaging” does not include such
32 single-use disposable items as straws, cup lids, or utensils, or
33 single-use disposable packaging for unprepared foods.

34 (d) “Food provider” means an establishment that provides
35 prepared food for public consumption on or off its premises and
36 includes, but is not limited to, a store, shop, sales outlet, restaurant,
37 grocery store, supermarket, delicatessen, catering truck, or vehicle.

38 (e) (1) “Prepared food” means ready-to-consume food or
39 beverage prepared on the food provider’s premises, using a
40 cooking or food preparation technique.

(2) “Prepared food” does not include raw uncooked meat, fish, or eggs, unless the item is provided for consumption without further food preparation.

(f) “Recyclable packaging” means a material that meets all of the following criteria:

(1) The packaging distributed with food for in-store consumption is accepted back for recycling by the food provider.

(2) The packaging is accepted for recycling in a residential collection program available to at least 75 percent of the households in the jurisdiction in which it is distributed, as determined by the department.

(g) “Single-use carryout bag” means a carryout bag provided by a store to a customer at the point of sale.

Article 3. Packaging Waste Reduction and Recycling Responsibilities

49752. (a) On and after July 1, 2011, until July 1, 2013, a food provider shall not distribute a disposable food service packaging or a single-use carryout bag to a consumer, unless the disposable food service packaging or single-use carryout bag meets the criteria for either compostable packaging or recyclable packaging.

(b) On and after July 1, 2013, a food provider shall not distribute a disposable food service packaging or a single-use carryout bag to a consumer, unless the department determines the disposable food service packaging or single-use carryout bag is recovered for composting or recovered for recycling at a rate of 25 percent or more.

~~SECTION 1. The Legislature finds and declares all of the following:~~

~~(a) Plastic and packaging waste represents a significant and fast-growing component of the state’s waste stream. California disposes of more than three million tons of plastic packaging waste annually. Plastic is the fastest growing component of generated waste, increasing from less than 5 percent in 1980 to more than 12 percent in 2008.~~

~~(b) With the sole exception of plastic beverage containers covered by the California Beverage Container Recycling and Litter Reduction Act, little of generated plastic is currently recycled.~~

1 ~~Excluding beverage containers, less than 5 percent of plastic~~
2 ~~packaging is currently recycled.~~

3 ~~(e) Plastic, including, but not limited to polystyrene, disposable~~
4 ~~food service packaging, and single-use bag litter, and the resulting~~
5 ~~ocean pollution, present more than an aesthetic problem, as this~~
6 ~~pollution poses a danger to marine organisms through ingestion~~
7 ~~and entanglement.~~

8 ~~(d) This plastic litter and ocean pollution present a serious and~~
9 ~~growing threat to water quality, the beneficial uses of the waters~~
10 ~~of the state, and recreational human use, as well as threatening the~~
11 ~~ability of California's waters and the Pacific Ocean to sustain~~
12 ~~aquatic life.~~

13 ~~(e) Upwards of 80 percent of ocean pollution originates from~~
14 ~~land-based human activities including littering and waste disposal~~
15 ~~practices. Each year thousands of Californians volunteer countless~~
16 ~~hours to clean up plastic and disposable food service packaging,~~
17 ~~and single-use bag litter from public roadways, beaches, parks,~~
18 ~~and other areas of the state.~~

19 ~~(f) California's aquatic and marine environments are~~
20 ~~increasingly threatened by the amount of plastic, disposable food~~
21 ~~service packaging, and single-use bags that are carried by storm~~
22 ~~water runoff.~~

23 ~~(g) Under a consent decree, a total maximum daily load (TMDL)~~
24 ~~for trash is required to be developed for all impaired waters within~~
25 ~~the state within the next decade. The TMDL for the Los Angeles~~
26 ~~River and Ballona Creek Watershed require that the amount of~~
27 ~~trash be reduced to zero to protect beneficial uses.~~

28 ~~(h) The costs to state agencies and local governments to comply~~
29 ~~with existing TMDL requirements, pending TMDL requirements,~~
30 ~~or the TMDL requirements yet to be developed, will run into the~~
31 ~~billions of dollars.~~

32 ~~(i) Data collected during California's annual Coastal Cleanup~~
33 ~~and the 1999 Pilot Litter Study by the Department of Conservation~~
34 ~~indicate that plastic, disposable food service packaging, and~~
35 ~~single-use bags, represent some of the most commonly littered~~
36 ~~items.~~

37 ~~(j) Disposable food service packaging is used "on the go" when~~
38 ~~access to trash and recycling receptacles is most limited.~~

39 ~~(k) Plastics generally can become inadvertent litter even if~~
40 ~~initially properly discarded, and are carried by wind from~~

1 uncovered trash cans and dumpsters, vehicles, and solid waste
2 facilities, including landfills.

3 (l) The benefits of reducing, recycling and composting plastics,
4 disposable food service packaging, and single-use bags, will have
5 a direct positive impact on the California economy.

6 (m) A 2005 study for the former Natural Resources Agency
7 concluded that ocean-dependent industries add forty-two billion
8 nine hundred million dollars (\$42,900,000,000) and 408,000 jobs
9 to California's economy.

10 (n) Compounding the problem of plastic packaging and waste,
11 this material is nonbiodegradable, and litter prone, since, even
12 when properly disposed, lightweight plastic packaging and
13 single-use bags can be blown from trash cans, garbage trucks, and
14 landfills.

15 (o) Nonbiodegradable plastic litter poses a real and growing
16 threat to water quality and the marine environment.

17 SEC. 2. Chapter 6.6 (commencing with Section 42395) is added
18 to Part 3 of Division 30 of the Public Resources Code, to read:

19
20 CHAPTER 6.6. PLASTIC OCEAN POLLUTION REDUCTION,
21 RECYCLING, AND COMPOSTING ACT

22
23 Article 1. General Provisions

24
25 42395. This chapter shall be known, and may be cited, as the
26 Plastic Ocean Pollution Reduction, Recycling, and Composting
27 Act.

28 42395.1. It is the intent of the Legislature, consistent with
29 recommendations in the Ocean Protection Council report
30 "Eliminating Land-based Discharges of Marine Debris in
31 California," to designate responsibility and authority for reduction
32 of marine debris, plastic ocean pollution, and its sources to a state
33 agency.

34
35 Article 2. Definitions

36
37 42395.2. For the purposes of this chapter the following terms
38 have the following meanings, unless the context clearly requires
39 otherwise:

1 (a) “Compostable packaging” means a material that meets any
2 of the following criteria:

3 (1) The packaging is accepted back for composting by the food
4 provider.

5 (2) The packaging is accepted for composting in a residential
6 collection program available to at least 75 percent of the households
7 in the jurisdiction in which it is distributed, as determined pursuant
8 to the regulations adopted by the department.

9 (3) The packaging is made of a material that meets the American
10 Society for Testing and Materials (ASTM) standard specification
11 for Compostable Plastics D6400, as published in September 2004.
12 For purposes of this paragraph, an ASTM standard specification
13 does not include an ASTM Standard Guide, a Standard Practice,
14 or a Standard Test Method.

15 (4) The packaging is recovered for composting at a rate of 25
16 percent or more, as determined pursuant to the regulations adopted
17 by the department.

18 (b) “Department” means the Department of Resources Recycling
19 and Recovery.

20 (c) (1) “Disposable food service packaging” means single-use
21 disposable products used by a food provider for serving or
22 transporting prepared and ready-to-consume food or beverages.

23 (2) “Disposable food service packaging” includes, but is not
24 limited to, plates, cups, bowls, trays, and hinged or lidded
25 containers.

26 (3) “Disposable food service packaging” does not include such
27 single-use disposable items as straws, cup lids, or utensils, or
28 single-use disposable packaging for unprepared foods.

29 (d) “Food provider” means an establishment that provides
30 prepared food for public consumption on or off its premises and
31 includes, but is not limited to, a store, shop, sales outlet, restaurant,
32 grocery store, supermarket, delicatessen, catering truck, or vehicle.

33 (e) (1) “Prepared food” means ready-to-consume food or
34 beverage prepared on the food provider’s premises, using a cooking
35 or food preparation technique.

36 (2) “Prepared food” does not include raw uncooked meat, fish,
37 or eggs, unless the item is provided for consumption without further
38 food preparation.

39 (f) “Recyclable packaging” means a material that meets any of
40 the following criteria:

1 ~~(1) The packaging is accepted back for recycling by the food~~
2 ~~provider.~~

3 ~~(2) The packaging is accepted for recycling in a residential~~
4 ~~collection program available to at least 75 percent of the households~~
5 ~~in the jurisdiction in which it is distributed, as determined pursuant~~
6 ~~to regulations adopted by the department.~~

7 ~~(3) The packaging is recovered for recycling at a rate of 25~~
8 ~~percent or more, as determined pursuant to regulations adopted by~~
9 ~~the department.~~

10 ~~(g) “Single-use carryout bag” means a carryout bag provided~~
11 ~~by a store to a customer at the point of sale.~~

12
13 ~~Article 3. Packaging Waste Reduction and Recycling~~
14 ~~Responsibilities~~

15
16 ~~42395.5. (a) On and after _____, until July 1, 2013, a food~~
17 ~~provider shall not distribute a disposable food service packaging~~
18 ~~or a single-use carryout bag to a consumer, unless the disposable~~
19 ~~food service packaging or single-use carryout bag meet the criteria~~
20 ~~for either compostable packaging or recyclable packaging.~~

21 ~~(b) On and after July 1, 2013, a food provider shall not distribute~~
22 ~~a disposable food service packaging or a single-use carryout bag~~
23 ~~to a consumer, unless the department determines the disposable~~
24 ~~food service packaging or single-use carryout bag is recovered for~~
25 ~~composting or recovered for recycling at a rate of 25 percent or~~
26 ~~more.~~

27 ~~42395.6. The department shall adopt regulations for purposes~~
28 ~~of implementing this chapter, including determining recycling and~~
29 ~~composting rates.~~

30
31 ~~Article 4. Fines and Penalties~~

32
33 ~~42395.7. (a) A person violating this chapter is subject to a~~
34 ~~civil penalty of not more than one hundred dollars (\$100) for each~~
35 ~~day the person is in violation of this chapter.~~

36 ~~(b) The total annual penalties assessed upon a violator of this~~
37 ~~chapter shall not exceed ten thousand dollars (\$10,000).~~

38 ~~(c) On or before _____, and on or before July 1 annually~~
39 ~~thereafter, the department shall annually publish a list setting forth~~

1 any penalties that have been levied against a person who was in
2 violation of this chapter in the preceding calendar year.

3 ~~(d) The department shall deposit all penalties or fines paid~~
4 ~~pursuant to this section into the Ocean Pollution Reduction~~
5 ~~Account, which is hereby created in the Integrated Waste~~
6 ~~Management Fund in the State Treasury. The moneys deposited~~
7 ~~in the Ocean Pollution Reduction Account may be expended by~~
8 ~~the department, upon appropriation by the Legislature, to provide~~
9 ~~public education and assist local governmental agencies in efforts~~
10 ~~to reduce plastic waste and marine debris, and for the department's~~
11 ~~costs of implementing this chapter.~~

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